

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ANTONIO JAWUAN DADE

vs.

DAVID DIGUGLIELMO, et al.

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CIVIL ACTION

NO. 08-CV-217

MEMORANDUM OPINION AND ORDER

GOLDEN, J.

JUNE 17, 2008

Petitioner was convicted in state court of murder in the first degree, aggravated assault, recklessly endangering another person, and possession of an instrument of crime. He is currently serving a term of life imprisonment. After exhausting his state court remedies, Petitioner filed a pro se petition for a writ of habeas corpus under 28 U.S.C. § 2254 in this court.

A Magistrate Judge issued a Report and Recommendation, recommending that the petition be dismissed as untimely because it was filed more than a decade after the one year period of limitation contained in section 2244(d) of the Antiterrorism and Effective Death Penalty Act of 1996 (“AEDPA”) had expired.¹ The Magistrate Judge further found that there was no basis for either statutory or equitable tolling of the statute of limitations. Finally, the Magistrate Judge recommended that Petitioner’s Motion for Appointment of Counsel be denied because the petition was so clearly untimely that counsel would be of no benefit to Petitioner. As a result, the Magistrate Judge recommended that no certificate of appealability be granted.

¹ Under the AEDPA, a writ of habeas corpus must be filed within one year from the date on which the judgment becomes final by the conclusion of direct review or the expiration of the time for seeking such review. 28 U.S.C. § 2244(d)(1)(A).

Petitioner has filed a two-page “Response to the Magistrate Judge’s Report and Recommendation” in which he does not object to any of the Magistrate Judge’s conclusions concerning the untimeliness of his petition, but simply renews his request for appointment of counsel.

The Court finds that the Magistrate Judge appropriately recommended that the request for appointment of counsel should be denied because counsel would be of no help to Petitioner given the fact that his habeas petition was filed more than decade after the limitation period had expired.

An appropriate Order follows.

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ORDER

AND NOW, this 17th day of June, 2008, upon consideration of the Report and Recommendation of the Magistrate Judge and the Response of Petitioner thereto, it is hereby ORDERED that the Report and Recommendation is ADOPTED.

It is further ORDERED that the Petitioner's Response to the Magistrate Judges's Report and Recommendation is OVERRULED.

It is further ORDERED that the Petition for a writ of habeas corpus is DISMISSED as untimely under the Antiterrorism and Effective Death Penalty Act of 1996.

It is further ORDERED that there is no probable cause to issue a certificate of appealability.

It is further ORDERED that the Clerk is DIRECTED to mark this case closed for statistical purposes.

BY THE COURT:

/s/ THOMAS M. GOLDEN
THOMAS M. GOLDEN